

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:

ROYAL INTERCO, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 25-10674 (TMH)

Jointly Administered

Objection Due: April 29, 2025 at noon

Hearing Date: May 2, 2025 at 11:00 a.m.

**UNITED STATES TRUSTEE’S OBJECTION TO DEBTORS’ MOTION
FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE
DEBTORS TO (A) OBTAIN POSTPETITION FINANCING AND (B) USE CASH
COLLATERAL, (II) GRANTING LIENS AND PROVIDING CLAIMS WITH
SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING
ADEQUATE PROTECTION TO THE PREPETITION LENDERS, (IV) MODIFYING
THE AUTOMATIC STAY, (V) SCHEDULING A FINAL HEARING AND
(VI) GRANTING RELATED RELIEF (D.I. 16)**

Andrew R. Vara, United States Trustee for Region 3 (“U.S. Trustee”), hereby files this Objection the (“Objection”) to the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Lenders, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing and (VI) Granting Related Relief* (the “Motion”) [D.I. 16]. In support of the Objection, the U.S. Trustee states:

INTRODUCTION

1. The Debtors owe over \$205 million in secured debt and have entered into a sale agreement to sell substantially all of their assets for \$126 million. As such, it is likely that the

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal EIN, are as follows: Royal Interco, LLC (7913); Doubletree Paper Mills, L.L.C. (1830); Royal Paper, LLC (9937); and Sun Paper Company, LLC (7899). The Debtors’ mailing address is 711 North 17th Avenue, Phoenix, AZ 85007.

Debtors' secured indebtedness far exceeds the value of their assets. Absent a sufficient budget (including a wind-down budget), the Debtors are administratively insolvent.

2. These cases apparently are being run solely for the benefit of the secured creditors. Administrative claimants may not be forced to fund a chapter 11 case for the benefit of secured lenders. Absent a sufficient budget, agreed to as part of the DIP financing agreement, to ensure "payment of the freight," the Motion should be denied.

JURISDICTION AND STANDING

3. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is charged with the administrative oversight of cases commenced pursuant to Title 11 of the United States Bankruptcy Code. Section 586(a)(3)(G) mandates that the U.S. Trustee monitor "...the progress of cases under title 11" and further requires that the U.S. Trustee take "such actions as the United States trustee deems to be appropriate to prevent undue delay in such progress."

4. Pursuant to 11 U.S.C. § 307, the U.S. Trustee has standing to be heard in this matter.

STATEMENT OF FACTS

5. On April 8, 2025 (the "Petition Date"), Royal Interco, LLC and three associated debtors (collectively, "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

6. On the Petition Date, the Debtors filed the Motion seeking entry of interim and final order authorizing the Debtors to obtain post-petition financing in the maximum amount of \$10 million. The Debtors have also filed a motion to sell substantially all of their assets free and clear of all liens, claims and encumbrances in accordance with section 363 of the Bankruptcy

Code. (the “Sale Motion”). D.I. 15.

7. The proposed purchase price is \$126 million (subject to certain adjustments) as well as the assumption of certain liabilities. Sale Mot. ¶ 7. The Debtors’ prepetition secured debt exceeds \$205 million. Mot. ¶ 24.

8. The Debtors maintain a self-funded health insurance plan for the benefit of its employees. D.I. 13 (Employee wages motion) ¶ 36.

9. The Motion includes only a 10-week budget.² Mot. Ex. B. At the end of the budget period, the Debtors will have no cash and will owe \$10,723,077 in post-petition, superpriority secured debt. *Id.*

10. At the first-day hearing, counsel for the Debtors explained that the budget is a “cash budget.” Further, counsel acknowledged that the Debtor will get “terms” and there will be accrued administrative expenses that are not included in the budget. In addition, claims under the self-funded insurance plans do not get paid for 30-90 days after they are incurred.

11. Neither the DIP loan agreement nor the order approving same provide for the payment of all administrative expense claims through conclusion of the cases. No “wind-down” budget is included in the DIP agreement, and there is no obligation for the lenders to provide such a wind-down budget.

12. Rather, the interim financing order provides that, subject to entry of the final order, the Debtors (and any Trustee) agree that there shall be no surcharge on the collateral, and provide for waivers of rights under 11 U.S.C. § 506(c) & 552(b). D.I. 53 (Interim financing order) ¶ 8. Further, the interim financing order provides that, subject to entry of the final order,

² The DIP loan agreement includes a “milestone” that requires that the Debtors close on a sale of substantially all of their assets by June 13. The ten-week budget goes through June 13.

all proceeds from the sale of the lenders' collateral will be remitted to the secured lenders, to be applied to both the pre- and post-petition secured debt. *Id.* ¶ 13.

13. The interim financing order also provides that, “[s]ubject to entry of the Final Order, Debtors hereby waive their rights: (a) to return any of the Aggregate Collateral pursuant to Code § 546(h); (b) to consent to any order permitting any claims pursuant to Code § 503(b)(9); and (c) to consent to setoff pursuant to Code § 553.” *Id.* ¶ 14.

ARGUMENT

14. The Debtors have apparently entered these cases administratively insolvent. Absent an agreement by the lenders to fund all administrative expenses, including all pre-sale claims of employees under the self-funded health insurance plans, all pre-sale administrative expenses that remain unpaid as of the closing, and a reasonable budget for post-sale administrative expense claims, these cases are being run for the benefit of the secured lenders at the expense of administrative claimants.

15. In *In re Townsends, Inc.*, when the Debtors proposed DIP financing that would pay most administrative claims but leave the § 503(b)(9) claims behind, Judge Sontchi stated, “I would have a problem running any case that was administratively insolvent. But one that is both administratively insolvent and prefers one set of administrative creditors over another is doubly troubling.” *In re Townsends, Inc., et al.*, Case No. 10-14092 (Bankr. D. Del.), 1/21/11 Tr. 24:4-24:9.³ While the record for approval of DIP financing only needs to establish reasonable evidence that administrative claims will be paid, “to go in with a path forward that indicates. . . that a certain type of administrative expense claim won’t get paid in full but yet others will, . . . I

³ A copy of the transcript is attached as Exhibit A.

can't run that kind of case.” *Id.* 24:18-24:22.

16. If the lenders wish to utilize this court to obtain the benefits of Chapter 11, they must provide for a sufficient budget, including a wind-down budget, to cover the costs of administrative expense claims. The current proposed DIP proposes to pay in full professionals of the estate and those creditors whose administrative expense claims are actually paid during the budget period. But those administrative claimants who provide terms and are not paid during the budget period, section 503(b)(9) claimants, and employees who accrue claims under the self-funded health insurance plans during the budget period will not be paid. Absent provision for these claimants, these cases are administratively insolvent and must be converted to a cases under chapter 7. Administrative claimants, including employees, cannot be required to fund these cases for the benefit of the lenders.

17. If the Court were inclined to approve the financing and permit the Debtors to address this funding shortfall in connection with the hearing on the sale of their assets, the DIP financing order should neither approve a waiver of 506(c) rights nor should it require that the Debtors remit all sale proceeds to the lenders for application to the pre- and post-petition secured debt. Rather, the availability of a surcharge waiver and the right to receive sale proceeds should also be addressed at the sale hearing.

18. Chapter 11 of the Bankruptcy Code is designed to allow a debtor-in-possession to retain management and control of the debtor's business operations. *See In re Eurospark Indus.*, 424 B.R. 621, 627 (Bankr. E.D.N.Y. 2010). As such, a debtor-in-possession owes fiduciary duties to the bankruptcy estate and must, among other things, “protect and . . . conserve property in [its] possession for the benefit of creditors” and “refrain [] from acting in a manner which could

damage the estate, or hinder a successful reorganization of the business.” *In re Ionosphere Clubs, Inc.*, 113 B.R. 164, 169 (Bankr. S.D.N.Y. 1990) (internal quotations and citation omitted).

19. The Debtors must ensure that their administrative creditors are paid in full. Where a debtor comes into chapter 11 administratively insolvent, to retain management and control of the debtor’s business operations, the debtor must ensure for an adequate budget – including a wind-down budget – from the debtor’s secured lenders, to protect administrative creditors and prevent a situation where the secured lender reaps the benefit of the chapter 11 case, and the unpaid administrative creditors are faced with conversion to a chapter 7 case or dismissal after all of the debtor’s assets are sold.

20. In addition, the proposed order provides that the Debtors waive their rights to return collateral pursuant to § 546(h), consent to § 503(b)(9) claims, and consent to setoffs under § 553. The Debtors are fiduciaries to the estate and should not cede their duties to the lenders. Furthermore, it would be a waste of judicial resources to require the Debtors to object to valid claims under §§ 503(b)(9) and 553.

CONCLUSION

Because these cases are administratively insolvent, the Motions must be denied absent an agreement with the lenders to fund a reasonable wind-down budget, which must include a budget that reasonably estimates all administrative expense claims and does not intentionally avoid paying certain categories of administrative expense claims.

WHEREFORE, the United States Trustee requests that this Court deny the Motions.

Andrew R. Vara,
United States Trustee, Region Three

Dated: April 29, 2025

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Exhibit A

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE
Case No. 10-14092 (CSS)

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In the Matter of:

TOWNSENDS, INC., et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
824 North Market Street
Wilmington, Delaware

January 21, 2011
1:09 PM

B E F O R E:
HON. CHRISTOPHER S. SONTCHI
U.S. BANKRUPTCY JUDGE

ECR OPERATOR: DANA MOORE

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2 HEARING re Motion of Debtors for Orders (A)Authorizing Debtors
3 (i)to Obtain Post-Petition Financing and Granting Security
4 Interests and Superpriority Administrative Expense Status
5 Pursuant to 11 U.S.C. § 364; (ii)to Use Cash Collateral
6 Pursuant to 11 U.S.C. § 363; (iii)to Provide Adequate
7 Protection Pursuant to 11 U.S.C. § 361; and (B)Scheduling a
8 Final Hearing and Establishing Related Notice Requirements
9

10 HEARING re Debtors' Motion for Entry of an Order Pursuant to 11
11 U.S.C. § 521, Fed. R. Bankr. P. 1007(c) and 9006(b) and Del.
12 Bankr. L.R. 1007-1 For Entry of an Order Granting the Debtors
13 an Extension of Time to File Schedules of Assets and
14 Liabilities and Statements of Financial Affairs
15

16 HEARING re Debtors' Motion For Entry Of An Order Pursuant To 11
17 U.S.C. §§ 105(a) And 363(b) Authorizing And Approving
18 (i)Retention And Employment Of Huron Consulting Group Nunc Pro
19 Tunc To The Petition Date; and (ii)Debtors Employment Of Dalton
20 T. Edgecomb As Chief Restructuring Officer
21
22
23
24

25 Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Please be seated. Mr. Abbott?

MR. ABBOTT: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. ABBOTT: Your Honor, thank you very much for giving us the additional time. I think we put it to good use. The headline is peace has broken out at least among the parties.

THE COURT: Okay.

MR. ABBOTT: We have three items on the agenda, Your Honor. But there's one off-agenda item that I'd like to address with the Court quickly if I may. Your Honor may recall at the second day hearing, the Court entered a final order regarding utilities. And at the first day hearing, Your Honor had made a comment about a particular aspect of that order setting a deadline by which the respective utilities may need to make noise or forever be barred. You didn't like the barring nature of the initially proposed order.

Apparently, we handed up an order that had not been completely struck. And so, your comment hadn't been baked in like we thought we had. So, if I could, Your Honor, I'd like to approach with an amended order and a blackline that shows that fix.

THE COURT: All right. Thank you.

1 (Pause)

2 THE COURT: And sorry I missed it. Give me just a
3 moment.

4 MR. ABBOTT: Sure.

5 (Pause)

6 THE COURT: All right. We're good? I'll sign the
7 order. Thank you --

8 MR. ABBOTT: Thank you, Your Honor.

9 THE COURT: -- for catching that. Mr. Buechler?

10 MR. BUECHLER: I was just -- since I did not see the
11 proposed order or have knowledge of what they were handing up,
12 I was asking Mr. Abbott a question to clarify something which
13 he did. Thank you.

14 THE COURT: Okay. Very good. I signed the order.
15 Thank you.

16 MR. ABBOTT: Thank you, Your Honor. Okay. Back to
17 the headline. Peace has broken out, Your Honor. There were
18 three items on the agenda. They were all contested. I believe
19 we've resolved all the issues. It took us a long time, Your
20 Honor, to actually get to the table. But once we got to the
21 table, we were able to get a resolution. So, unfortunately,
22 I'm not in a position now to hand up an order. What I thought
23 I would do, Your Honor, is try to describe as best I can the
24 resolution of various issues, explain them to the Court.
25 Assuming the Court doesn't have a problem, go back and get

1 those baked into an order, circulate it among the parties and
2 then submit it under certificate assuming the Court was viewing
3 the motion favorably.

4 THE COURT: Okay.

5 MR. ABBOTT: Your Honor, as I indicated on the -- at
6 the first day hearing on this case, troubled industry and a
7 company that's out of money and, in fact, out of money so that
8 absent a sale or other disposition where there was some
9 assumption of payables, virtually no chance that any pre-
10 petition claims -- unsecured claims are paid. Unfortunately,
11 that situation has deteriorated pretty dramatically post-
12 petition, Your Honor. This business relies heavily on corn and
13 other feed ingredients to feed the chickens. And the budget
14 that we had previously discussed, Your Honor, that went out
15 through March 20th contemplated, at the time of budgeting, what
16 was a reasonable estimate of corn prices at about \$5.75 a
17 bushel.

18 Since that time, Your Honor, corn prices have risen
19 dramatically to the point where at some point this week -- I'm
20 not sure what they are today. They were, I believe, in and
21 around \$6.50 which, if I'm not mistaken, is about a fifteen
22 million dollar annual input cost delta. What that means, Your
23 Honor, is that our budget, because it's limited in total
24 amount, had to shorten up. We are not going to get to March
25 20th on the funding that we've got. And we've been discussing

1 that at length over the last days and weeks with the lenders,
2 the committee professionals, et cetera.

3 The committee has done -- started some investigation,
4 has spent a lot of time getting familiar with the company.
5 They raised a number of concerns about the financing as you
6 perhaps saw in their objection. At the end of the day, we've
7 agreed on a number of changes that have gotten the committee
8 comfortable with us going forward. It's all predicated, Your
9 Honor, on a DIP budget and, essentially, a sale track that ends
10 basically on February 18th which is soon and sooner than we
11 wanted.

12 There have been a number of concessions by the lenders
13 and changes to the structure. And we're going to have to also,
14 Your Honor, provide you an updated budget, obviously, that
15 shortens that time period up. Critical among the changes, and
16 to address the committee's concern that there was inadequate
17 funding for the payment of potential 503(b)(9) claims, Your
18 Honor -- and we've gone as far as we can to address that issue.
19 And notwithstanding that, there still remains some chance that
20 503(b)(9)s will not be paid in full. But all the adequate
21 protection payments and interest payments that had previously
22 been discussed and were built into the interim order which
23 aggregate in round numbers a million three have now been
24 revised. And the budget's going to be changed. And that
25 amount of money is going to be called the working capital

1 contingency. It's not going to be paid to the banks until the
2 end of the case. It is going to be available in a handful of
3 circumstances to cover either working capital shortfalls or
4 unanticipated unpaid post-petition trade payables. And the
5 lenders have further agreed to either carve out or fund
6 depending on the nature of a sale transaction certain proceeds
7 in the event of a disposition, Your Honor. And there's a
8 sliding scale there. But essentially -- there really are two
9 scenarios. Somebody pays us for assets or the lenders credit
10 bid for assets. We've tried to account for both those
11 scenarios to the committee's satisfaction. And in the context
12 of a third party transaction, which would either be a sale
13 under 363 or -- essentially, only a sale under 363 or
14 potentially a liquidation that could include a sale. But
15 there's more to liquidation than just a 363 sale.

16 But in any event, Your Honor, proceeds derived from
17 either a sale or liquidation in Chapter 11 or Chapter 7, as the
18 case may be, of all or part of the lenders' collateral from the
19 proceeds from zero to fifteen million dollars, the lenders will
20 either carve out or pay if they credit bid -- let me strike
21 that. I'm going to talk about credit bid later. They will pay
22 from those proceeds of cash received between zero and fifteen
23 million dollars 500,000 dollars for the benefit of holders of
24 any unpaid 503(b)(9) claims.

25 The next increment, Your Honor, is between fifteen

1 million and thirty million. And if there are proceeds in that
2 range, there's another 250,000 dollars that goes for that same
3 benefit.

4 Between thirty million and thirty-two million, there's
5 another 250,000 dollars for the benefit of the same group. And
6 then to the extent that there's a sale or the receipt of cash
7 proceeds in excess of thirty-two million, that -- those
8 claimants would receive the first 800,000 dollars.

9 So --

10 THE COURT: What's your --

11 MR. ABBOTT: -- the total is a million eight, Your
12 Honor.

13 THE COURT: What's your estimate of 503(b)(9) claims?

14 MR. ABBOTT: The best estimate we have today is
15 somewhere in the sixteen million dollar range, Your Honor.
16 Some of those --

17 THE COURT: And how high do we get? 1.8 million?

18 MR. ABBOTT: Yes, Your Honor.

19 THE COURT: All right.

20 MR. ABBOTT: Some of those 503(b)(9) claims may be the
21 subject of critical vendor payments. The Court may recall that
22 critical vendor payments we authorized had the dollar for
23 dollar reduced in any 503(b)(9) claim to the extent there was
24 one.

25 That's the proceeds from a sale. If there's a credit

1 bid by the lenders for any of these assets, Your Honor, the
2 lenders have simply agreed to pay that 1.8 million provided
3 that if there's a scenario where there's a sale of part and a
4 credit bid for part, they don't double pay. So they would pay
5 the 1.8 but they would get a credit for any payments under the
6 disposition that I've just discussed. So if there's a sale of
7 ten million, that creates a 500,000 dollar payment obligation.
8 If there's a credit bid for the rest, they'll pay the 1.8 less
9 the five for a total of 1.8. So in no circumstance does the
10 number go beyond that 1.8, Your Honor.

11 The working capital contingency item that had
12 previously been the adequate protection payments -- we're going
13 to add some language to the order that essentially says that is
14 reserved and isn't disbursed except for necessary operational
15 expenditures approved by the lenders in advance. Accrued
16 unpaid post-petition trade payables unpaid as of February 18th
17 as provided in the budget or necessary operational expenditures
18 approved by the lenders to facilitate some later closing beyond
19 February 18th but no later than February 25th as long as the
20 delay is not the fault of a proposed transferee. Meaning, if a
21 buyer delays, the banks aren't obligated to pay that because
22 the buyer should.

23 In addition, Your Honor, because of the concern -- and
24 a legitimate concern, Your Honor, about the administrative
25 solvency of this case and the concern that post-petition

1 payables be satisfied, the debtors have agreed that if there is
2 no closing on or before February 25th, which is the extended
3 date, that the debtors would act to convert the case through a
4 case under Chapter 7 under the Bankruptcy Code as soon as
5 practicable. We are dealing with --

6 THE COURT: Say that part again, please.

7 (Pause)

8 MR. ABBOTT: If there's not a closing of the
9 disposition, by February 18th or the extended date of February
10 25th and we're out of money, which is what our budget shows,
11 the debtors don't intend to continue to run the case beyond
12 where they can pay their post-petition payables. And so
13 they've agreed that if they get to those dates and there's not
14 a closing, they would act to convert the case to Chapter 7 to
15 protect against the accrual of post-petition administrative
16 payables that were not funded.

17 (Pause)

18 MR. ABBOTT: I'm not sure I rephrased that --

19 THE COURT: No. I got it.

20 MR. ABBOTT: -- adequately. Okay.

21 The other important aspect of this deal, Your Honor,
22 because this case is, in fact, so thin, obviously, for trade
23 creditors, is that the committee has agreed to allow the bank
24 to take liens on avoidance actions not for the purpose of
25 collecting them or pursuing them, but that the bank would take

1 those liens and would covenant not to bring those actions
2 against trade payables. Carved out of that, Your Honor, are
3 any avoidance actions against the banks themselves that are
4 preserved under paragraph 29 and part of the committee clawback
5 period and any avoidance actions as to insiders. Those liens
6 would attach only to avoidance actions against trade creditors.

7 That, in broad strokes, Your Honor, is the global
8 resolution of the committee's concerns with the funding and the
9 sale process. Now, as I said, it presupposes a dramatic
10 shortening of the budget and the life of this case, frankly.
11 It also contemplates a sale process that's more accelerated
12 than we had initially anticipated. And I'm not asking the
13 Court to approve anything now, but we will file, tonight over
14 the weekend, or at the latest, Monday, a motion seeking bid
15 procedures. It will likely not include a stalking horse, but
16 we'll reserve or ask the Court to allow us to reserve the right
17 to anoint a stalking horse during the process if one should be
18 appropriate, and it contemplates a closing of that sale by
19 February 18th. And the dates that we will be asking for, Your
20 Honor, just so it's clear and you understand the big picture in
21 the context of this DIP, we would ask to have any bids
22 submitted with all the appropriate financial wherewithal, all
23 the sort of normal materials, by February 11th. We would
24 propose to have an auction on February 15th. Your Honor has
25 already scheduled an omnibus hearing on February 18th, and that

1 would be the date that we would need to close by. And so we
2 would presume to either ask the Court to hear that sale
3 approval at the February 18th hearing at 10 a.m., or if it was
4 possible, we'll work with chambers to move that omnibus date
5 one day earlier to the 17th. We would try to do it then so
6 we've got a little bit more room at the closing. That's
7 obviously subject to the Court's approval of the bid procedures
8 and calendar. But that's the -- one of the fundamental
9 assumptions of this resolution, Your Honor.

10 THE COURT: All right. Anyone else?

11 MR. BUECHLER: Your Honor, Bruce Buechler from
12 Lowenstein Sandler on behalf of the official committee of
13 unsecured creditors. Just briefly, Your Honor, because the
14 resolution would have the committee withdraw the objection to
15 the final DIP. The committee, just by very brief background,
16 is very concerned and has come to the conclusion that these
17 debtors, as currently constituted financially, and these
18 bankruptcy cases are administratively insolvent. And we were
19 faced with a very untenable position, given what it looks like
20 the assets will likely be sold for and the amount of secured
21 debt that we are behind in the form of the debt owed to the
22 lenders. And granted, we are doing our lien review, and
23 nothing in our proposed settlement of the DIP impacts the
24 committee's ability to complete its lien review, and if there
25 is a valid challenge to the lenders, whether with regard to

1 perfection, validity, or other claims or causes of action, the
2 committee reserves those rights under paragraph 29 of the order
3 to commence such a cause of action before our deadline, which
4 is sometime in the latter part of February, if I recall.

5 But we realized, and we were very concerned as a
6 committee with ensuring that post-petition, trade creditors
7 that are doing business with this debtor may not realize the
8 gravity of this situation, make sure that there's adequate cash
9 to cover them, and the only way that was done was by the
10 debtors shortening the sale process. And in part, when you
11 push behind their budget, it's done, also in part because they
12 were liquidating some of the inventory that they have on hand
13 to speed up their cash.

14 Number two, we negotiated to the best that we could to
15 get some monies for the 503(b)(9) claimants because in our
16 view, the Bankruptcy Code puts them on the same level.
17 Granted, they're not entitled to, by most courts, payment up
18 front, but rather at a plan, but realistically, we don't
19 envision that once these sales are done, that there's any
20 financial wherewithal or ability, financially, for these
21 companies to then confirm a plan of liquidation. We
22 unfortunately view it as unsecured creditors we have, beside
23 the 503(b)(9)s, will have no distribution unless, from the sale
24 or the disposition, liquidation of the assets that these
25 debtors operate, unless there are potential litigation claims.

1 And therefore, the committee was very concerned that unsecured
2 creditors shouldn't suffer what I'll call a double travesty
3 which is they don't get paid anything on their unsecured
4 claims, and then the trustee may get likely appointed in these
5 cases, unless there's potentially a dismissal, and they face
6 preference actions which, in our experience from trade creditor
7 cases, never really results in much of a dividend going back to
8 the unsecured creditors in cases such as this, nature of this,
9 especially where many of the larger creditors did business with
10 the debtor on very short terms.

11 So part of the negotiation with regard to the
12 avoidance actions is that there will be part of the bank's
13 lien, but the bank covenants that they will never prosecute or
14 sue, nor will they transfer, sell or assign them to a third
15 party, so in essence, they will not be available. And
16 preference actions against trade creditors will not be pursued.
17 It does, as Mr. Abbott made clear, carve out that that does not
18 include claims against insiders, as defined in the Code, or the
19 members of the bank group.

20 But we were dealing with a very -- facing a very
21 serious financial reality that while this company may have done
22 a lot of business, the asset value, simply put, isn't there to
23 deal with the 503(b)(9)s to the level that we would have really
24 liked to achieve. And therefore, we tried to negotiate, under
25 the circumstances, what was the best case and looked at whether

1 a liquidation or a dismissal would result in a better result
2 for creditors, including the 503(b)(9) claimants, as well as an
3 alternative. And that is why we have come to this agreement
4 with both the lender group and the debtors. And while it's
5 clearly a settlement that nobody is happy and in love with, it
6 just deals with very, very bad reality, which, as we comment on
7 the first page of our objection, and Your Honor commented at
8 the initial hearing that nobody was pleased with the DIP, but
9 there's some real issues that we all had to face and grapple
10 with and do the best we could.

11 So that's the rationale of why the committee is not
12 pushing this, because at the end of the day, a dismissal gets
13 nobody anything, nor does a conversion, right away, get
14 unsecured creditors any more money, and it probably will result
15 in a more negative result from the unsecured creditor
16 perspective.

17 With the settlement that we reached concerning the
18 final order and the DIP financing motion, the committee has
19 agreed to withdraw its objection to the rejection of Huron and
20 Mr. Edgecomb as the chief restructuring officer.

21 With regard to the third item on the calendar which is
22 the debtor's motion to extend time to file the statements and
23 schedules, the debtors are still seeking the deadline of
24 February 17th, which is possibly the day of the sale or the day
25 before the sale, depending on the Court's calendar. The

1 committee still thinks that's a little too far out. Mr. Abbott
2 has assured us that the debtor's personnel and people in his
3 office are working to get those done as soon as possible. We
4 were hoping that by adjourning that from last week's hearing
5 till today, they might have been done. He's asked us to
6 withdraw that objection, as well. Candidly, I'm somewhat
7 ambivalent because we'd like to have them filed sooner than
8 later, but he's assured us that if the committee needs any
9 data, we will get what we need, and to date, the debtor's
10 personnel, as well as the Huron team, have been cooperative
11 with the committee in giving us in a real-time basis the data
12 that we need. So I'm not going to be pushing that objection
13 before the Court, vis-a-vis the extension of statements and
14 schedules, but the committee is somewhat realistic with the
15 economics of what we're facing. Clearly not very happy
16 campers, if you will, in this situation, but to use the
17 expression we can't get money where it doesn't exist, and
18 unfortunately, nobody expects, given the difficult time and the
19 amount of time this has been shopped, that at this date, the
20 debtor still does not have a signed asset purchase agreement to
21 go forward with or a letter of intent that's been signed at an
22 economic value that the lenders find acceptable to move
23 forward, so that's all still in a state of play. And we hope
24 they get there because that's crucial to that. But that's why,
25 if there's a credit bid ultimately by the banks on the

1 collateral, the same million-eight will be available for the
2 503(b)(9) claimants, given their administrative priority status
3 is protected by the Code.

4 Unless Your Honor has any questions of the committee
5 position, that's why we have come to difficult conclusions, and
6 it's been a lot of conversation by the committee including
7 direct conversation between the committee members and the
8 bankers, yesterday, with no professionals on the phone call to
9 discuss these issues.

10 THE COURT: Okay.

11 MR. BUECHLER: Thank you.

12 THE COURT: Thank you, Mr. Buechler. Anybody else
13 wish to be heard?

14 Let me see if I understand, Mr. Abbott. Under no
15 scenario will the 503(b)(9) creditors be paid in full?

16 MR. ABBOTT: Your Honor, technically, it's possible;
17 practically, impossible. The range of values, given the amount
18 of debt, here, we just don't see a buyer clearing the secured
19 debt.

20 THE COURT: But other administrative claims will be
21 paid in full?

22 MR. ABBOTT: Post-petition administrative claims, we
23 expect to be paid in full under this revised budget, Your
24 Honor.

25 THE COURT: Well, we've got a problem. Not going to

1 run an administratively insolvent estate. There are benefits
2 to the current administrative claims that are accruing. There
3 are benefits to the unsecured creditors. But it can't be done
4 on the back of the 503(b)(9) admin claims, which are admin
5 claims. Congress has made that determination. So certainly I
6 would have a problem running any case that was administratively
7 insolvent. But one that is both administratively insolvent and
8 prefers one set of administrative creditors over another is
9 doubly troubling. So that's -- well, I'm not going to do it.

10 MR. ABBOTT: To clarify --

11 THE COURT: I'm not making -- I'm not making the --
12 this came up on Goody's, for example, Goody's I, and it turned
13 out we were all wrong. But the point there was there had to be
14 a set aside to pay these claims in the plan that the evidence
15 indicated was a reasonable estimate that they would get paid.
16 Turns out, it was wrong. But the point being, I'm not making
17 anyone guarantors or insurers of the fact that the case is
18 administratively solvent. But to go in with a path forward
19 that indicates -- and I certainly appreciate your candor to the
20 Court -- that a certain type of administrative expense claim
21 won't get paid in full but yet others will, I just -- I can't
22 run that kind of case.

23 MR. ABBOTT: I understand that, Your Honor. Could I
24 ask the -- well, is it --

25 THE COURT: Need help? Go ahead.

1 MR. ABBOTT: -- fair to say, Your Honor, that that is
2 a denial, perhaps, without prejudice to our financing motion?

3 THE COURT: Well, it's hard for me to say. I haven't
4 seen it. I haven't seen the final order. But if the final
5 order indicates that that's what's going to be in it, I'm not
6 going to approve it.

7 MR. ABBOTT: Understand, Your Honor.

8 THE COURT: And in addition, if it appears that the
9 case is administratively insolvent, I would be inclined to
10 either, upon motion or even sua sponte, either convert or
11 dismiss the case. Mr. Buechler?

12 MR. BUECHLER: Maybe the parties need to talk, Your
13 Honor, and maybe we need to adjourn this to the beginning of
14 next week to do that. The only point I will make is if we get
15 to that point where Your Honor is faced with conversion or
16 dismissal, the committee has set forth in the objection that we
17 did file regarding the DIP financing, made very clear what our
18 preference was and why. And so we would ask the Court to -- if
19 we get to that point, understanding Your Honor's position, and
20 we appreciate that, and that's part of what we said in our
21 objection, but we had to deal with reality, too, and tried
22 to -- would clearly support dismissal as being in the best
23 interest of the unsecured creditors in the estates for the
24 reasons I stated before as well as in our response, or
25 objection, if Your Honor gets to that fork in the road. But I

1 think given what Your Honor has said, maybe it makes sense to
2 see -- either talk for a few minutes or possibly adjourn this
3 to the beginning of next week to let the lenders reconsider
4 whether they're going to make a shift in position because the
5 numbers, and the budget numbers and the 503(b)(9) numbers,
6 simply put, don't change.

7 THE COURT: Yeah, I --

8 MR. BUECHLER: There's a cash burden.

9 THE COURT: I can't ask anyone to change reality, and
10 it is what it is. Not all cases are appropriate to be handled
11 in Chapter 11.

12 MR. ABBOTT: Understood, Your Honor.

13 Your Honor, I think my preference would be to ask the
14 Court to adjourn at least that motion until sometime next week,
15 early next week, if Your Honor has time.

16 THE COURT: Certainly. I'll make time. No, it's
17 important that this issue get taken care of sooner rather than
18 later in any event because as the business continues,
19 administrative expenses continue to accrue.

20 MR. BUECHLER: That's been one of our driving
21 concerns. So it's really a matter of Your Honor's
22 availability. I don't know if Diane has any idea of when
23 you'll have response from your clients, in part.

24 MR. ABBOTT: May we have a moment, Your Honor?

25 THE COURT: Of course. Having said all that,

1 Wednesday is difficult for next week.

2 MR. BUECHLER: Excuse me?

3 MR. ABBOTT: I'm sorry, Your Honor?

4 THE COURT: Having said all that, Wednesday would be
5 difficult for me next week. Otherwise --

6 MR. ABBOTT: Your Honor, as you said, this is an
7 urgent issue that needs to be dealt with. We'd prefer Monday
8 afternoon, if the Court's got any time.

9 THE COURT: Absolutely. Let's see. I can do -- hang
10 on, I'm getting a message here. Not good. Joint hearing with
11 Canada. Yeah, I've got a joint video hearing with the Canadian
12 court in Pope & Talbot at 1. Let me put you on for 3, but
13 don't be surprised if --

14 MR. ABBOTT: I've never seen a joint video hearing
15 with a Canadian court go short, Your Honor.

16 THE COURT: Yeah, no, no, there's too much formality
17 involved.

18 MR. BUECHLER: Is 3:30 better?

19 THE COURT: I'm sorry?

20 MR. BUECHLER: Pushing it back another half hour,
21 would that --

22 THE COURT: Well, I -- in case -- I don't want you to
23 waste your time cooling your heels out in the hallway, but I
24 don't want to waste a lot of time if the hearing's over early.
25 So 3:30's fine.

1 MR. BUECHLER: Can I ask one favor of the Court?

2 THE COURT: Yes.

3 MR. BUECHLER: While I'll send someone from my office
4 to the hearing because I'm actually leaving on Sunday for
5 vacation, would I be permitted to participate by telephone --

6 THE COURT: Yes.

7 MR. BUECHLER: -- if it works out? Thank you, Your
8 Honor.

9 THE COURT: Yes. So 3 or 3:30, which do you prefer?

10 MR. ABBOTT: 3:30's fine, Your Honor.

11 THE COURT: All right.

12 MR. ABBOTT: If that is easier.

13 THE COURT: 3:30 p.m. Monday.

14 MR. ABBOTT: May I have one other moment, Your Honor?

15 THE COURT: Um-hmm.

16 MR. ABBOTT: All right, Your Honor --

17 MR. BUECHLER: Your Honor, in light of what Your Honor
18 has said, the committee will stick with its position that we
19 don't have an issue with our objection with regard to the Huron
20 retention. So unless Your Honor has any questions, we don't
21 have an issue.

22 With regard to the DIP financing, if Your Honor has
23 not approved of the settlement at this moment, our objection
24 remains there and we'll see where things go on Monday
25 afternoon.

1 As to the statements and schedules issue, we leave
2 that to the Court's discretion and determination, from my
3 perspective.

4 THE COURT: All right, well, I'll approve the Huron
5 retention and the extension of time to file schedules.

6 MR. ABBOTT: Thank you, Your Honor. With respect to
7 Huron --

8 Just a second, Your Honor, if we may.

9 (Pause)

10 MR. ABBOTT: Your Honor, at the request of the U.S.
11 Trustee, we have revised the Huron retention order to make it
12 consistent with their preferred form of Jay Alix retention.

13 THE COURT: Okay.

14 MR. ABBOTT: And if I may approach, Your Honor, I
15 would hand up a clean and blackline of that order and a clean
16 and blackline of the schedules and statements, Your Honor.
17 Because of the dispute, Your Honor, we've left the date blank
18 in the schedules and statements. Our request still would be
19 for February 17th, but you'll see that blank that the Court can
20 fill in.

21 THE COURT: Well, I mean, I don't know how you sell
22 something if you don't know what you're selling, but I assume
23 Mr. Victor's more than capable of selling ice to Eskimos, so.

24 MR. ABBOTT: I've heard that phrase used --

25 THE COURT: It won't be a problem.

1 MR. ABBOTT: -- before with reference to Mr. Victor,
2 Your Honor. May I approach?

3 THE COURT: Yes. Any other comments on these orders?
4 All right. I've signed Huron. What day are you looking for?

5 MR. ABBOTT: February 17th, Your Honor.

6 THE COURT: And how many extra days is that?

7 MR. ABBOTT: I believe that would be sixty from the
8 petition, so it's thirty beyond what the local rule provides.

9 THE COURT: Okay. All right, I've signed it.

10 MR. ABBOTT: Thank you, Your Honor. We will see Your
11 Honor, then, at 3:30 on Monday afternoon.

12 THE COURT: Very good. Anything else?

13 MR. BUECHLER: Thank you, Your Honor.

14 MR. ABBOTT: Thank you, Your Honor.

15 THE COURT: Very well. All right, we're adjourned.

16 (Whereupon these proceedings were concluded at 1:44 p.m.)
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R U L I N G S

| DESCRIPTION | PAGE | LINE |
|---|------|------|
| Debtors' first day utilities motion revised | 10 | 14 |
| and entered | | |
| Huron retention application approved | 29 | 4 |
| Debtors' motion for extension of time to file | 29 | 4 |
| schedules and SOFAs approved | | |

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib

Digitally signed by Lisa Bar-Leib
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LISA BAR-LEIB (CET**D-486)

AAERT Certified Electronic Transcriber

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: February 22, 2011

CERTIFICATE OF SERVICE

I, Linda Casey, hereby attest that on April 29, 2025, I caused to be served a copy of this *United States Trustee's Objection to Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Lenders, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing and (VI) Granting Related Relief* by electronic service on the registered parties via the Court's CM/ECF system and upon the following parties by electronic mail:

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